

PATENT COOPERATION TREATY

Rec'd PCT/PTC 07 OCT 2004

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To: RUSCHKE, Hans E Ruschke Hartmann Becker Pienzenauerstrasse 2 81679 München ALLEMAGNE	RUSCHKE HARTMANN BECKER ANWALTSSOZIETÄT 19. April 2004 20.6.2004 (b) FRIST TERM W: 20.5.04 17 EINGANG - RECEIVED	PCT WRITTEN OPINION (PCT Rule 66)	
		Date of mailing (day/month/year)	20.04.2004
Applicant's or agent's file reference J1494HO	REPLY DUE		within 2 month(s) from the above date of mailing
International application No. PCT/US 03/08428	International filing date (day/month/year) 20.03.2003	Priority date (day/month/year) 09.04.2002	
International Patent Classification (IPC) or both national classification and IPC E03C1/046			
Applicant JOHNSONDIVERSEY, INC.			
<p>1. This written opinion is the first drawn up by this International Preliminary Examining Authority.</p> <p>2. This opinion contains indications relating to the following items:</p> <ul style="list-style-type: none"> I <input checked="" type="checkbox"/> Basis of the opinion II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application <p>3. The applicant is hereby invited to reply to this opinion.</p> <p>When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).</p> <p>How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.</p> <p>Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.</p> <p>If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.</p> <p>4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 09.08.2004</p>			

Name and mailing address of the international preliminary examining authority: European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer De Coene, P Formalities Officer (incl. extension of time limits) Korving, J Telephone No. +31 70 340-2052
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-12 as originally filed

Claims, Numbers

1-10 as originally filed

Drawings, Sheets

1/3-3/3 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

5. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	5-8 NO
Inventive step (IS)	Claims	
Industrial applicability (IA)	Claims	

2. Citations and explanations**see separate sheet**

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 5-8 is not new in the sense of Article 33(2) PCT:

1.1 Claim 5 defines a non-return valve cartridge comprising as technical features:
an inlet,
an outlet, and
a non-return valve between the inlet and the outlet..

1.2 The remaining features of claim 5, i.e.

"adapted to be removably installed in an air gap of an eductor having an air gap and a venturi inlet zone",
"adapted to receive water from a supply line", and
"adapted to deliver water to the venturi inlet zone"

are non-distinctive characteristics of a particular intended use. Since claim 5 is directed to a physical entity, i.e. a non-return valve cartridge, these remaining characteristics limit the subject-matter insofar, that a known cartridge merely has to be suitable for the particular use. In other words, if a known cartridge is suitable for that use, these characteristics should be disregarded in interpreting claim 1 for determining novelty.

Thus, since any non-return valve cartridge inevitably has to be provided with the above technical features and can be removably installed as defined above in an eductor with corresponding dimensions, any known non-return valve cartridge is novelty destroying for the subject-matter of claim 5.

1.3 Furthermore, it is a matter of normal design procedure, to provide a non-return valve cartridge with sealing surface to connect it with other parts of an installation. Therefore, also the subject-matter of claims 6-8 is not novel.

2. Furthermore, claims 5-8 are in addition not fulfilling the PCT-requirements for the following reason.
 - 2.1 The object of the invention (page 4, lines 10-13) is to address the drawbacks of known eductor arrangements, in particular to provide a system that can be changed readily between an air gap arrangement and a non return-valve arrangement. It is evident that this object can only be realised by providing the combination of an eductor and a non-return valve.
 - 2.2 Since independent claim 5 does not contain the eductor it does not meet the requirement following from Article 6 PCT that any independent claim must contain all the technical features essential to the definition of the invention.
 - 2.3 Furthermore, this objection cannot be overcome by including features from dependent claims 6-8, as also these claims do not contain the eductor.
3. In order to overcome the above objections, claims 5-8 have to be deleted from the application.
4. Present independent claims 1 and 9 and dependent claims 2-4 and 10 fulfill the PCT-requirements.